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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120405263-3517-01]

RIN 0648-BB76

Fisheries of the Exclusive Economic Zone Off Alaska; Tanner Crab Area Closure in the Gulf of Alaska and Gear Modification Requirements for the Gulf of Alaska and Bering Sea Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 89 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and that would revise current regulations governing the configuration of modified nonpelagic trawl gear. First, this proposed rule would establish a protection area in Marmot Bay, northeast of Kodiak Island, and close that area to fishing with trawl gear except for directed fishing for pollock with pelagic trawl gear. The proposed closure would reduce bycatch of Tanner crab (*Chionoecetes bairdi*) in Gulf of Alaska (GOA) groundfish fisheries. Second, this proposed rule would require that nonpelagic trawl gear used in the directed flatfish fisheries in the Central Regulatory Area of the GOA be modified to raise portions of the gear off the sea floor. The proposed modifications to nonpelagic trawl gear used in these fisheries would reduce the unobserved injury and mortality of Tanner crab, and would reduce the potential adverse impacts of nonpelagic trawl gear on

bottom habitat. Finally, this proposed rule would make a minor technical revision to the modified nonpelagic trawl gear construction regulations to facilitate gear construction for those vessels required to use modified nonpelagic trawl gear in the GOA and Bering Sea groundfish fisheries. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2011-0294, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2011-0294, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be

posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible.

Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 89, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the Area Closures for Tanner Crab Protection in Gulf of Alaska Groundfish Fisheries (Area Closures EA/RIR/IRFA), and the EA/RIR/IRFA for Trawl Sweep Modification in the Flatfish Fishery in the Central Gulf of Alaska (Trawl Sweep EA/RIR/IRFA) are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907-586-7006.

SUPPLEMENTARY INFORMATION:

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

The Council submitted Amendment 89 for review by the Secretary of Commerce, and a notice of availability of Amendment 89 was published in the Federal Register on June 3, 2013,

with comments invited through August 2, 2013. Comments may address Amendment 89 or this proposed rule, but must be received by 1700 hours, A.D.T. on August 2, 2013 to be considered in the approval/disapproval decision on Amendment 89. All comments received by that time, whether specifically directed to Amendment 89, or to this proposed rule, will be considered in the approval/disapproval decision on Amendment 89.

Background

Since the implementation of the FMP for Groundfish of the GOA (GOA FMP) in 1978, the Council and NMFS have adopted various measures intended to control the catch of species taken incidentally in groundfish fisheries. Certain species are designated as “prohibited” in the FMP, because they are the target of other, fully utilized domestic fisheries. The GOA FMP and implementing regulations at § 679.21 require that catch of these species and species groups must be avoided while fishing for groundfish, and when incidentally caught, they must be immediately returned to the sea with a minimum of injury. These species and species groups include Pacific halibut, Pacific herring, Pacific salmon, steelhead trout, king crab, and Tanner crab. The incidental catch of prohibited species is referred to as “bycatch” under the Magnuson-Stevens Act because prohibited species must not be sold or kept for personal use and are required to be discarded under § 679.21, or retained but not sold under the Prohibited Species Donation Program at § 679.26.

The Council has recommended, and NMFS has implemented, measures to: (1) close areas with a high occurrence of prohibited species, or where there is a relatively high level of prohibited species catch; (2) require the use of gear specifically modified to minimize prohibited species catch and effects on bottom habitat; and (3) establish prohibited species catch (PSC) limits in specific Alaska groundfish fisheries in both the BSAI and GOA. A summary of these

measures is in Section 1 of the Area Closures EA/RIR/IRFA (see ADDRESSES) and in the notice of availability for Amendment 89 to the FMP.

This proposed rule would implement two actions to reduce the injury and mortality of Tanner crab and the potential adverse impacts of nonpelagic trawl gear on bottom habitat in the Central GOA. First, this proposed rule would establish a closure to vessels using trawl gear, with an exemption for vessels using pelagic trawl gear to directed fish for pollock. Second, this proposed rule would require that nonpelagic trawl gear used in the directed flatfish fisheries in the Central GOA Regulatory Area (Central GOA) be modified to raise portions of the gear off the sea floor. This proposed rule also would make a minor technical revision to the modified nonpelagic trawl gear construction regulations to facilitate gear construction for those vessels required to use modified nonpelagic trawl gear in the GOA and BSAI groundfish fisheries as recommended by the Council.

Amendment 89 to the FMP for Groundfish of the GOA

In October 2009, the Council chose to initiate an analysis of potential protection measures for Tanner crab in the Central GOA. In April 2010, the Council initially reviewed alternative bycatch control measures, subsequently revised and refined these alternatives, and in October 2010, recommended Amendment 89, which contains two protection measures for Tanner crab in the Central GOA groundfish fisheries.

The Council identified several reasons for these protection measures for Tanner crab in the GOA groundfish fisheries:

- Tanner crab is identified in the FMP as a prohibited species which is incidentally caught in the Central GOA groundfish trawl, pot, and longline fisheries. Tanner crab is incidentally caught in relatively high proportion by vessels using

nonpelagic trawl gear in the Central GOA.

- Directed fisheries for Tanner crab in the Central GOA are fully allocated under the current limited entry system managed by the State of Alaska. Details of this crab fishery are described in Section 3.5 in the Area Closures EA/RIR/IRFA.
- No specific conservation measures exist in the Central GOA to address adverse interactions with Tanner crab by vessels using trawl gear to directed fish for groundfish.
- Tanner crab is a bottom-dwelling species, and limits on the use of nonpelagic trawl gear may reduce Tanner crab PSC and adverse effects on Tanner crab habitat.

The protection measures recommended by the Council for Amendment 89 would: (1) establish a habitat protection area in Marmot Bay near Kodiak, AK, and close the area to most trawl fishing to reduce Tanner crab PSC in the Central GOA groundfish fisheries and potential adverse effects on bottom habitat; and (2) require the use of modified pelagic trawl gear when directed fishing for flatfish in the Central GOA. Additional detail for each of these measures follows.

Proposed Action 1: Marmot Bay Tanner Crab Protection Area

This proposed rule would establish a year-round closure for a portion of Marmot Bay to vessels using trawl gear to directed fish for groundfish. This closure area would be called the Marmot Bay Tanner Crab Protection Area (Marmot Bay Area). The proposed Marmot Bay Area is northeast of Kodiak Island and would extend westward from 151 degrees 47 minutes W longitude to State waters between 58 degrees N latitude and 58 degrees 15 minutes N latitude. The proposed Marmot Bay Area would share borders with two existing areas, the Marmot Flats

Area and the Outer Bay Area. The southern and eastern borders of the Marmot Bay Area would be the same latitude and longitude as the northern and eastern borders, respectively, of the existing Marmot Flats Area. The Marmot Flats Area is closed to directed fishing with nonpelagic trawl gear (see § 679.22(b)(1)(i) and Figure 5 to part 679). Under current regulations, the Outer Marmot Bay Area is open to directed fishing with nonpelagic trawl gear unless otherwise closed. The proposed Marmot Bay Area overlaps with a portion of the Outer Marmot Bay Area. In this area of overlap, the more restrictive measures that would be implemented for the Marmot Bay Area would apply. The proposed Marmot Bay Area, and the existing Marmot Flats and Outer Marmot Bay Areas, are shown in the proposed Figure 5 to part 679. State of Alaska waters to the west of both the proposed Marmot Bay Area and the existing Marmot Flats Area are closed year-round to the use of nonpelagic trawl gear under existing State regulations (5 AAC 39.164).

With one exception, this proposed rule would close the Marmot Bay Area year-round to directed fishing for groundfish by vessels using trawl gear. The term “directed fishing” is defined in regulation at § 679.2. Directed fishing for pollock by vessels using pelagic trawl gear would be exempt from this closure. Overall, the effect of the proposed Marmot Bay Area closure would be to extend closures on the use of nonpelagic trawl gear to north and east of existing State and Federal waters closed to nonpelagic trawl gear. The Marmot Bay Area closure also would prohibit the use of all trawl gear, other than pelagic trawl gear used in the directed fishery for pollock. The Council recommended this exemption due to the limited potential reductions of Tanner crab PSC that would occur if the pelagic trawl pollock fishery were subject to the closure. The use of pelagic trawl gear for species other than pollock was not identified in the Marmot Bay Area; therefore, the Council determined that no additional exemptions to the

trawl closure were warranted. (See Section 3.3.2 of the Area Closures EA/RIR/IRFA for additional detail.)

The Council recommended the Marmot Bay Area trawl gear closure based primarily on the high observed rate of Tanner crab mortality by nonpelagic trawl gear in the Marmot Bay Area relative to other areas in the Central GOA. See Section 3.3 of the EA/RIR/IRFA prepared for the area closures for additional detail. The areas with the greatest abundance of crab are the Marmot Bay Area, northeast of Kodiak Island; the Chiniak Gully east of Kodiak Island; and Alaska Department of Fish and Game (ADF&G) Statistical Areas 525702 and 525630, southeast of Kodiak Island. The Marmot Bay Area had the highest average mortality rate of crab per metric ton (mt) of groundfish catch by vessels using nonpelagic trawl gear in the Kodiak District between 2001 and 2009 (the most recent years of available data) at 7.68 crab/mt groundfish. (See Section 3.3 of the Area Closures EA/RIR/IRFA for additional detail.)

The Council considered a range of alternative closure areas to limit the use of nonpelagic trawl gear and pot gear in the Marmot Bay Area, ADF&G Statistical Areas 525702 and 525630, and the Chiniak Gully. Ultimately, the Council determined that limiting the closure to trawl gear in the Marmot Bay Area is necessary and appropriate based on: (1) the high rate of Tanner crab mortality in the Marmot Bay Area relative to other areas; (2) the observation of mature male and female Tanner crab populations within the Marmot Bay Area; (3) the occurrence of known Tanner crab habitat within the Marmot Bay Area; (4) the high rate of Tanner crab bycatch by vessels using trawl gear relative to pot gear; and (5) the limited impact that the Marmot Bay Area closure would likely have on existing nonpelagic trawl participants relative to closures in other areas. See Section 3.1 of the Area Closures EA/RIR/IRFA for additional detail of the alternatives considered. The Council considered but rejected closing areas to pot, longline, and pelagic trawl

gear in the directed pollock fishery given the small amount of Tanner crab bycatch by these gear types relative to Tanner crab bycatch by nonpelagic trawl gear. (See Section 3.3.3 of the Area Closures EA/RIR/IRFA for additional detail.)

The Marmot Bay Area closure implemented under Amendment 89 would be consistent with past measures the Council has recommended, and NMFS has implemented, to limit impacts of nonpelagic trawl gear on crab populations directly by limiting injury and mortality, and indirectly by reducing potential adverse habitat impacts. Overall, observed Tanner crab mortality in the Central GOA accounts for less than two fifths of one percent of the assessed crab population in the Central GOA. (See Section 3.3.3 of the Area Closures EA/RIR/IRFA for additional detail.) Because overall crab bycatch in the GOA groundfish fisheries can be small in relation to crab population, but potentially concentrated in certain areas or at certain times, time and area closures are more effective than Tanner crab PSC limits in reducing the potential impacts of nonpelagic trawl gear on crab stocks. The proposed closure to nonpelagic trawl gear in the Marmot Bay Area may assist in the conservation of the Tanner crab stock by reducing injury and mortality and potential adverse effects of nonpelagic trawl gear on bottom habitat used by Tanner crab.

In October 2010, the Council also recommended that NMFS incorporate statistically robust observer information from specific areas near Kodiak, AK (ADF&G Statistical Area 525702, and Chiniak Gully). Overall, the intent of the Council's recommendation was to improve estimates of Tanner crab bycatch data in the GOA groundfish fisheries. At the same meeting that the Council recommended enhanced observer coverage for these three areas, the Council recommended Amendment 86 to the BSAI FMP and Amendment 76 to the GOA FMP to comprehensively restructure the funding and deployment of onboard observers under the

North Pacific Groundfish Observer Program (Observer Program). Aware of its decision on Amendments 86 and 76, the Council included as part of its recommendation for improved estimates of Tanner crab bycatch that NMFS “incorporate, to the extent possible, in [the restructured Observer Program], an observer deployment strategy that ensures adequate coverage to establish statistically robust observations” in the three specific areas near Kodiak, AK.

NMFS published a notice of availability for Amendments 86 and 76 to the FMPs on March 14, 2012 (77 FR 15019), and a proposed rule for the restructured Observer Program on April 18, 2012 (77 FR 23326). On June 7, 2012, the Secretary of Commerce approved Amendments 86 and 76 to the FMPs for the restructured Observer Program in the Alaska groundfish fisheries and the final rule to implement the amendments, effective January 1, 2013, was published on November 21, 2012 (77 FR 70062). Details of the restructured Observer Program are available in the proposed and final rules for that action.

The restructured Observer Program improves the quality of fisheries data, including Tanner crab bycatch information in the GOA groundfish fisheries. Vessels under the restructured Observer Program are either fully or partially observed. A detailed list of vessels in the full and partial observer coverage categories is provided in the restructured Observer Program proposed rule (77 FR 23326, April 18, 2012). A randomized system for the assignment of observer coverage throughout the GOA for partially observed vessels is used to reduce potential bias in the observer data. Selecting specific locations in the Central GOA for increased observer coverage would reduce the ability to randomize observer assignments and therefore potentially bias observer data. Because the restructured Observer Program incorporates an observer deployment strategy that ensures adequate coverage to establish statistically robust observations for the GOA, NMFS has determined that the Council’s recommendation has been

implemented by Amendments 86 and 76 and no additional measures are needed with GOA Amendment 89. NMFS intends to use the regulations and deployment process established under the restructured Observer Program to obtain fishery catch and bycatch data without specifying specific observer coverage requirements in specific areas in the GOA. In order to ensure that the Council's desire to obtain better observer data is being met, NMFS will present a deployment plan for observers annually for the Council's review.

Proposed Action 2: Modification of Nonpelagic Trawl Gear Used in the Central GOA Directed Flatfish Fisheries

When the Council recommended the Marmot Bay Area closure in October 2010, it directed its staff to review the practicality of requiring the use of modified nonpelagic trawl gear by vessels directed fishing for flatfish in the Central GOA. The Council recommended this review as a first step in considering additional measures to reduce the potential adverse effects of nonpelagic trawl gear on bottom habitat and to reduce unobserved Tanner crab injury and mortality. The Council's recommendation was based on past experience with the use of modified nonpelagic trawl gear to reduce potential adverse effects on bottom habitat in Bering Sea flatfish fisheries. In 2008, NMFS, including its Office of Law Enforcement, and the fishing industry tested modified nonpelagic fishing gear in the Bering Sea under normal fishing conditions to determine if this gear could be used safely and effectively in ways that may reduce potential adverse effects on bottom habitat while maintaining effective catch rates for flatfish target species. These initial tests were successful, and in October 2009, the Council recommended Amendment 94 to the BSAI FMP to require vessels directed fishing for flatfish in the Bering Sea subarea to use modified nonpelagic trawl gear. In 2010, NMFS published final regulations implementing Amendment 94 (75 FR 61642, October 6, 2010). In February 2012,

the Council reviewed an analysis of potential impacts of expanding the required use of modified nonpelagic trawl gear to vessels participating in the Central GOA flatfish fisheries. After additional review in April 2012, the Council recommended requiring that vessels directed fishing for flatfish in the Central GOA use modified nonpelagic trawl gear. This Council recommendation was the second proposed action included in Amendment 89.

The proposed action would require vessels using nonpelagic trawl gear when directed fishing for flatfish in the Central GOA to comply with the same performance standard and gear construction requirements required for vessels in the Bering Sea flatfish fisheries (see regulations at § 679.24(f)). Central GOA flatfish fisheries include directed fisheries for shallow-water flatfish, deep-water flatfish, arrowtooth flounder, rex sole, and flathead sole.

The Council considered but rejected alternatives that would have required the use of modified nonpelagic trawl gear in other GOA nonpelagic trawl fisheries (e.g., Pacific cod), and the use of nonpelagic trawl gear in the Eastern and Western GOA flatfish fisheries. Flatfish fisheries in the Central GOA contribute the greatest proportion of Tanner crab PSC, while other nonpelagic trawl gear fisheries in the GOA account for only a modest proportion of Tanner crab PSC. (See Sections 1.1 and 1.5 of the Trawl Sweep EA/RIR/IRFA for additional detail (see ADDRESSES)). The Council determined and NMFS agrees that proposed action 2 targets the specific fisheries that consistently have the highest bycatch of Tanner crab in the GOA.

The primary effect of the proposed action would be to require modifications to a specific component of the gear. Nonpelagic trawl gear uses a pair of long lines called “sweeps” to herd fish into the net. The sweeps drag across the bottom and may adversely impact benthic organisms (e.g., crab species, sea whips, sponges, and basket stars). Approximately 90 percent of the bottom contact of nonpelagic trawl gear used in directed fishing for flatfish is from the

sweeps, which can be more than 1,000 feet (304.8 m) in length.

Studies in the Bering Sea have shown that elevating the trawl sweeps can reduce the adverse effects of nonpelagic trawl gear on Tanner, snow, and red king crabs by reducing the unobserved mortality and injury of these species. In addition, elevating the trawl sweeps can reduce impacts on benthic organisms, such as basketstars and sea whips. Further research was conducted in 2011 in the GOA to identify the appropriate construction of modified nonpelagic trawl gear, and to identify and resolve any implementation issues specific to the GOA. Field testing in the GOA of the modified nonpelagic trawl gear demonstrated that the participants in the GOA flatfish fisheries can meet the same performance standard and construction requirements that apply to the Bering Sea flatfish fisheries under regulations at § 679.24(f). Additional information on these studies and tests is provided in Section 1.5.5 of the Trawl Sweep EA/RIR/IRFA.

The proposed action would require that vessels using nonpelagic trawl gear when directed fishing for flatfish in the Central GOA must comply with the performance standard to raise the elevated section of the sweeps at least 2.5 inches, as specified in § 679.24(f). Elevating devices would be placed on the sweeps to meet this performance standard. Section 679.24(f) requires elevating devices along the entire length of the elevated section of the sweeps to be spaced no less than 30 feet (9.1 m) apart. To allow for construction flexibility and to allow for wear and tear that might occur during a tow, two different sweep configurations are provided that specify the maximum spacing of elevating devices. The first configuration uses elevating devices that have a clearance height of 3.5 inches (8.9 cm) or less with spacing between the elevating devices of no more than 65 feet (19.8 m). The second configuration uses elevating devices that have a clearance height greater than 3.5 inches (8.9 cm) with spacing between the elevating

devices of no more than 95 feet (29 m). Either configuration combined with the minimum spacing for elevated devices of no less than 30 feet (9.1 m) would meet the combined gear construction requirements and performance standard for modified nonpelagic trawl gear.

As noted in Section 1.8 of the Trawl Sweep EA/RIR/IRFA, NMFS cannot quantify a benefit to crab stocks in the Central GOA from modified nonpelagic trawl gear without further testing to understand how sediment conditions in the Central GOA flatfish fisheries compare to the areas in which the Bering Sea experiments occurred. However, the general similarity of GOA trawl gear to that used in the Bering Sea indicates that while the benefits may be smaller due to different sediment conditions in the GOA, they would still be substantial. While requiring this gear modification for vessels fishing in Central GOA flatfish fisheries could provide benefits to crab stocks by reducing unobserved injury and mortality, it likely would not change reported crab PSC totals from nonpelagic trawl fishing, which account only for crabs that come up in the trawl net. As noted in Section 2.9 of the Trawl Sweep EA/RIR/IRFA, the proposed action is not expected to result in a net decrease in the catch rates in the Central GOA flatfish fisheries.

Proposed Action 3: Technical Revision to the Modified Nonpelagic Trawl Gear Construction Requirements in the BSAI

This proposed rule would revise one component of the regulations at § 679.24(f) concerning construction requirements for modified nonpelagic trawl gear. The proposed regulatory change is based on experience gained in 2011 with constructing this gear for use in the Bering Sea flatfish fisheries. This minor technical revision would increase the limit for the lines that connect the doors and the net to the elevated portions of the sweeps from 180 feet (54.8 m) to 185 feet (56.4 m). This limit is shown on proposed Figure 26 to part 679. Specifically, the revision would slightly increase the maximum length to 185 feet (56.4 m) for the lines between

the door bridles and the elevated section of the trawl sweeps, and between the net, or headline extension, and the elevated section of the trawl sweeps. The Council determined and NMFS agrees that the additional proposed length would allow for the space required to use standardized cable lengths that are 90 feet (27.4 m), and add connecting devices to attach the trawl doors and net to the sweeps without further trimming the cables. This revision would apply to the construction requirements for modified nonpelagic trawl gear currently required in the BSAI groundfish fisheries and proposed in this rule for the Central GOA flatfish fisheries. Section 2.10 of the Trawl Sweep EA/RIR/IRFA notes that there would be no additional effects from this revision other than reducing the costs of constructing the modified nonpelagic trawl gear.

Summary of Proposed Regulatory Revisions Required by the Actions

In order to implement the proposed actions described above, the following changes to regulations would have to be made. NMFS proposes to revise two definitions and add one definition in regulations at § 679.2. The definition of “federally permitted vessel” would be revised to include the application of this definition to those vessels required to use modified nonpelagic trawl gear in the Central GOA flatfish fisheries. This revision would identify vessels required to comply with the modified nonpelagic trawl gear requirements and would be consistent with existing modified nonpelagic trawl gear requirements.

The definition of “directed fishing” would be revised to add a definition of the directed flatfish fisheries in the GOA. This revision would list the flatfish target species that would be used in determining when modified nonpelagic trawl gear would be required under § 679.24(f) based on directed fishing for flatfish. This proposed revision is necessary to identify the target species that would determine when a vessel is directed fishing for flatfish so the requirement to use modified nonpelagic trawl gear can be applied. A definition of the Marmot Bay Tanner Crab

Protection Area would be added to § 679.2. This proposed definition is necessary to identify the location of the area and to define this area consistent with other fishery management areas with similar restrictions.

NMFS proposes to revise § 679.7(b) to add a prohibition on directed fishing for flatfish in the Central GOA without using modified nonpelagic trawl gear. This proposed revision is necessary to require the use of modified nonpelagic trawl gear for directed fishing for flatfish in the Central GOA Regulatory Area and to ensure that the modified nonpelagic trawl gear meets the performance standard and construction requirements specified at § 679.24(f).

NMFS proposes to revise § 679.22 to add the Marmot Bay Tanner Crab Protection Area as an area closed to trawling in the GOA. The closure would include an exemption for vessels directed fishing for pollock with pelagic trawl gear. This proposed revision is necessary to identify the area closed, the applicable gear type, and the target fishery exempted from the closure.

NMFS proposes to revise § 679.24(f) to include reference to the Central GOA flatfish fisheries. This proposed revision is necessary to require vessels using nonpelagic trawl gear to directed fish for flatfish in the Central GOA to comply with the modified nonpelagic trawl gear requirements in this section.

NMFS proposes to revise Figure 5 to part 679 to add an illustration and definition of the Marmot Bay Tanner Crab Protection Area. This area would include Federal waters westward from 151 degrees 47 minutes W longitude to State waters between 58 degrees 0 minutes N latitude and 58 degrees 15 minutes N latitude. Use of trawl gear, other than pelagic trawl gear used in directed fishing for pollock, would be prohibited at all times in the Marmot Bay Tanner Crab Protection Area. This proposed revision is necessary to identify the Marmot Bay Tanner

Crab Protection Area as recommended by the Council in proposed Amendment 89. Due to the revision of Figure 5 to part 679, the table of coordinates for this figure would be revised to reflect the removal of letters that identified coordinate locations on several, already established protection areas. In addition, this proposed rule would correct the coordinates in the current table from degree, minutes, seconds, to degree, decimal minutes. This revision would improve the clarity of the table coordinates in combination with the revised figure and ensure the correct coordinates are listed in the consistent format used for other closure areas in the regulations.

NMFS proposes to modify Figure 26 to part 679 to show the 185 foot (56.4 m) limit for the lines connecting the elevated section of the sweeps to the door bridles and to the net or headline extensions. The proposed revision to Figure 26 is necessary to illustrate the proposed changes to the construction requirements for modified nonpelagic trawl gear.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 89, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

IRFAs were prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFAs describe the economic impact this proposed rule, if adopted, would have on small entities. A description of the proposed action, why it is being considered, and the legal basis for the proposed action is contained at the beginning of this section and in the SUMMARY section of the preamble and are not repeated here. A summary of the analysis follows. Copies of

the complete analyses are available from NMFS (see ADDRESSES).

Number and Description of Small Entities Regulated by the Proposed Action

Information regarding ownership of vessels that would be used to estimate the number of small entities that are directly regulated by this action is limited. Two IRFAs were prepared to support this action. The IRFA prepared for the area closure (Proposed Action 1), and the IRFA prepared for the trawl modification requirement (Proposed Action 2) and the gear construction requirement revision (Proposed Action 3) estimated the number of small versus large entities, gross earnings from all fisheries of record for 2009 by vessel, the known ownership of those vessels, and the known affiliations of those vessels in the BSAI or GOA groundfish fisheries for that year. The entities directly regulated by Proposed Action 1 are those entities that participate in the groundfish fisheries using trawl gear in the proposed Marmot Bay Area (except for pelagic trawl vessels directed fishing for pollock). From 2003 through 2009, 68 vessels used nonpelagic trawl gear in the Central GOA and therefore would be directly regulated by Proposed Action 1. Of these 68 vessels, 26 vessels had gross earnings of less than \$4.0 million, thus categorizing them as small entities based on the threshold that the Small Business Administration (SBA) uses to define small fishing entities. For Proposed Action 2, 51 vessels participated in the Central GOA flatfish fisheries in one or more years between 2003 and 2010, making these vessels directly regulated under Proposed Action 2. Of these vessels, 2 catcher processors and 8 catcher vessels that participate in the Central GOA flatfish fisheries had gross earnings of less than \$4.0 million, thus categorizing them as small entities. For Proposed Action 3, these same 10 GOA vessels that are small entities under Proposed Action 2 also would be small entities for the correction to the modified nonpelagic trawl gear construction requirements for the Bering Sea and Central GOA flatfish fisheries. From 2000 to 2008, approximately 46 vessels operated in

the directed flatfish fisheries in one or multiple years in the Bering Sea subarea. All of the catcher processors directed fishing for flatfish in the Bering Sea exceeded the \$4.0 million threshold, when considering their combined groundfish revenues, and would be considered large entities for purposes of the RFA. None of the four catcher vessels that participated in the Bering Sea flatfish fisheries met the threshold, based on their combined groundfish revenues, and these four vessels are considered small entities for purposes of the RFA. It is likely that some of these vessels also are linked by company affiliation, which may then qualify them as large entities, but information is not available to identify ownership status of all vessels at an entity level. Therefore, the IRFA for Proposed Action 3 may overestimate the number of small entities in the Bering Sea directly regulated by Proposed Action 3.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities

For Proposed Action 1, the Council evaluated three alternatives with components and options for area closures in the Central GOA to reduce Tanner crab PSC. Alternative 1 is the status quo or no action alternative, which would not change the nonpelagic trawl gear closures currently established in the Central GOA, or require the use of modified nonpelagic trawl gear when directed fishing for flatfish in the Central GOA. This alternative did not meet the Council's intent to provide further protection to Tanner crab from the potential effects of the groundfish fisheries.

Alternative 2 would close one or more of the following areas to pot and trawl groundfish fisheries; a portion of Marmot Bay (Marmot Bay Area), northeast of Kodiak; a portion of the

Chiniak Gully, east of Kodiak, and ADF&G Statistical Areas 525702 and 525630, southeast of Kodiak. These areas were considered for closure because of the relatively high abundance of Tanner crab occurring there. Alternative 2 also considered closure timing for these areas as either year-round or from January 1 through July 31. Suboptions considered under Alternative 2 (which could be combined together) included closures to pot gear and trawl gear individually and exemptions for vessels with modified nonpelagic trawl gear, vessels using pelagic trawl gear, or vessels using pelagic trawl gear when directed fishing for pollock. As described above, the Marmot Bay Area had a high rate of Tanner crab mortality compared to the other areas considered, and closing the Marmot Bay Area would have limited adverse impact to participants in the nonpelagic trawl fishery compared to the additional closures considered. Data presented in the Section 3.3.2 of the Area Closures EA/RIR/IRFA prepared for area closures indicated that closures to pot gear would not contribute substantially to the objective to reduce Tanner crab PSC, therefore pot gear vessels were not included in the Council's recommendation. Section 3.3.3 of the Area Closures EA/RIR/IRFA indicates that year-round closures would minimize bycatch and potential adverse effects on Tanner crab habitat relative to seasonal closures. Section 5.3 of the Area Closures EA/RIR/IRFA notes that exemptions to the closure area for vessels using modified nonpelagic trawl gear presents a difficult enforcement challenge because it is not possible to easily distinguish between modified and non-modified nonpelagic trawl gear under current fishery management practices. Section 3.3.3 of the Area Closures EA/RIR/IRFA notes that exempting vessels using pelagic trawl gear to directed fish for pollock would have very limited impact on Tanner crab bycatch.

Alternative 3 considered allowing pot gear and trawl gear to target groundfish in the areas considered for closure provided they had additional observer coverage, compared to existing

observer requirements, when fishing in these areas. Vessels using trawl gear would be required to carry observers 100 percent of the days fished in the area(s) selected. This additional coverage would not apply towards meeting the existing coverage requirements outside the tanner crab protection areas. Vessels using pot gear less than 125 feet (38.1 m) length overall would be required to carry observers 30 percent of the days fished in the area(s) selected. These additional coverage requirements were considered because the Council desired more robust estimates of PSC to further develop management protection measures for Tanner crab. Section 5.5 of the Area Closures EA/RIR/IRFA notes that with the anticipated implementation of the restructured Observer Program, a randomized system for the assignment of observer coverage throughout the GOA for partially observed vessels would be used to reduce potential bias in the observer data. Selecting specific locations in the Central GOA for increased observer coverage would reduce the ability to randomize observer assignments and therefore potentially bias observer data.

Alternative 4 (the preferred alternative), which was recommended by the Council and would be implemented by this proposed rule, is a modification of Alternative 2. Under Alternative 4, the Council recommended the Marmot Bay Tanner Crab Protection Area for year-round closure to vessels directed fishing for groundfish using trawl gear, with the exception of vessels using pelagic trawl gear to directed fish for pollock. Under Alternative 4, the Council also recommended that NMFS incorporate, to the extent possible, an observer deployment strategy under the anticipated restructured Observer Program that ensures adequate coverage to establish statistically robust observations in the specific areas considered for closure under Alternative 2. As noted earlier in the preamble, in October 2010 the Council recommended enhanced observer coverage under Amendment 89, Amendment 86 to the BSAI FMP, and Amendment 76 to the GOA FMP to restructure the Observer Program. The Council was aware

of these concurrent actions, and recommended as part of Amendment 89 that NMFS “incorporate, to the extent possible, in [the restructured Observer Program], an observer deployment strategy that ensures adequate coverage to establish statistically robust observations” in the specific areas near Kodiak, AK. Amendments 86/76 were approved by the Secretary of Commerce on June 7, 2012. NMFS published a final rule to implement Amendments 86/76 on November 21, 2012 (77 FR 70062) with an effective date of January 1, 2013. In order to ensure that the Council’s desire to obtain better observer data is being met, NMFS will present a deployment plan for observers annually for the Council’s review.

Under Alternative 4, NMFS anticipates that the imposition of this trawl closure will not prevent the GOA groundfish fisheries from achieving the annual total allowable catch (TAC) for these species. The impact on vessels will be proportional to the extent that they rely on the Marmot Bay Area, the success they have in offsetting forgone catch from fishing outside of the Marmot Bay Area in the remaining open areas, and the net cost of making the adjustment. Because catch from the Marmot Bay Area represents only a small proportion of the total groundfish catch by vessels using nonpelagic trawl gear, NMFS anticipates that vessels will be able to catch the TAC of species that have been caught in the Marmot Bay Area in neighboring areas not closed to this gear. (See Section 6.6 of the Area Closures EA/RIR/IRFA for additional detail.) Alternative 4 meets the objectives of the action to protect Tanner crab while minimizing the economic impact on gear types and fisheries that are not as likely to adversely impact Tanner crab.

For Proposed Action 2, the Council evaluated two alternatives. Alternative 1, the status quo or no action alternative, would not require the use of modified nonpelagic trawl gear by vessels directed fishing for flatfish in the Central GOA. Alternative 1 does not meet the

Council's objective to protect Tanner crab.

Alternative 2, the Council's preferred alternative, would require vessels directed fishing for flatfish in the Central GOA to use modified nonpelagic trawl gear. This proposed action has identical performance standard and gear construction requirements as those implemented under Amendment 94 to the BSAI FMP, which requires modified nonpelagic trawl gear for vessels directed fishing for flatfish in the Bering Sea subarea (75 FR 61642, October 6, 2010).

The average initial cost of gear modification for participants in the Central GOA flatfish fisheries is approximately \$12,600, and requires approximately \$3,000 in annual maintenance. For vessels using main line winches to set and haul back the modified nonpelagic trawl gear, there also may be a one-time cost for modifying the vessel to accommodate the modified nonpelagic trawl gear. Depending on a vessel's configuration, the cost may be \$20,000 to \$25,000 or higher. This cost may be offset if the modification to the nonpelagic trawl gear extends the useful life of the sweeps, and reduces the frequency with which new gear must be purchased. The owners of nonpelagic trawl gear vessels, not dependent on revenues derived from the Central GOA flatfish fisheries, may decide to forego the modified nonpelagic trawl gear and not participate in the Central GOA flatfish fisheries.

For Proposed Action 3, the technical revision to nonpelagic trawl gear construction requirements, the revision would reduce the cost of gear construction by approximately \$2,000.00. The proposed change would facilitate the use of the 90 feet (27.4 m) standard length of cables used in constructing the modified nonpelagic trawl gear by allowing for the additional length needed for the connecting devices. This would allow for the gear to be constructed within the construction requirements without further labor and materials costs to trim the standard length of cables. No other alternative to Proposed Action 3 is identified that would reduce costs

to small entities and meet the Council’s objective to improve the construction requirements for modified nonpelagic trawl gear.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: June 11, 2013.

Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs,
performing the functions and duties of the Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.2, revise the definitions of “directed fishing” and “Federally permitted vessel” and add in alphabetical order the definition of “Marmot Bay Tanner Crab Protection Area” to read as follows:

§ 679.2 Definitions.

* * * * *

Directed fishing means:

* * *

(6) With respect to the harvest of flatfish in the Central GOA Regulatory Area, for purposes of modified nonpelagic trawl gear requirements under §§ 679.7(b)(9) and 679.24(f), fishing with nonpelagic trawl gear during any fishing trip that results in a retained aggregate amount of shallow-water flatfish, deep-water flatfish, rex sole, arrowtooth flounder, and flathead sole that is greater than the retained amount of any other trawl fishery category as defined at § 679.21(d)(3)(iii).

* * * * *

Federally permitted vessel means a vessel that is named on either a Federal fisheries permit issued pursuant to § 679.4(b) or on a Federal crab vessel permit issued pursuant to § 680.4(k) of this chapter. Federally permitted vessels must conform to regulatory requirements for purposes of fishing restrictions in habitat conservation areas, habitat conservation zones, habitat protection areas, and the Modified Gear Trawl Zone; for purposes of anchoring prohibitions in habitat protection areas; for purposes of requirements for the BS and GOA nonpelagic trawl fishery pursuant to § 679.7(b)(9), § 679.7 (c)(5), and § 679.24(f); and for purposes of VMS requirements.

* * * * *

Marmot Bay Tanner Crab Protection Area means a habitat protection area of the Gulf of Alaska specified in Figure 5 to this part that is closed to directed fishing for groundfish with trawl gear, except directed fishing for pollock by vessels using pelagic trawl gear.

* * * * *

3. In § 679.7, add paragraph (b)(9) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(b) * * *

(9) Conduct directed fishing for flatfish, as defined in § 679.2, with a vessel required to be federally permitted in the Central GOA Regulatory Area, as defined in Figure 3 to this part, without meeting the requirements for modified nonpelagic trawl gear specified at § 679.24 (f) and illustrated in Figures 25, 26, and 27 to this part.

* * * * *

4. In § 679.22, revise paragraph (b)(3) to read as follows:

§ 679.22 Closures.

* * * * *

(b) * * *

(3) Marmot Bay Tanner Crab Protection Area. No federally permitted vessel may fish with trawl gear in the Marmot Bay Tanner Crab Protection Area, as described in Figure 5 to this part, except federally permitted vessels directed fishing for pollock using pelagic trawl gear.

* * * * *

5. In § 679.24, revise the introductory text in paragraph (f) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(f) Modified nonpelagic trawl gear. Nonpelagic trawl gear modified as shown in Figure 26 to this part must be used by any vessel required to be federally permitted and that is used to directed fish for flatfish, as defined in § 679.2, in any reporting area of the BS or in the Central

GOA Regulatory Area or directed fish for groundfish with nonpelagic trawl gear in the Modified Trawl Gear Zone specified in Table 51 to this part. Nonpelagic trawl gear used by these vessels must meet the following standards:

* * * * *

6. Revise Figure 5 to part 679 to read as follows:

Figure 5 to Part 679– Kodiak Island Type 1, 2, and 3 Nonpelagic Trawl Closure Status and Marmot Bay Tanner Crab Protection Area
(see § 679.22(b)(1) and (b)(3))

a. Map

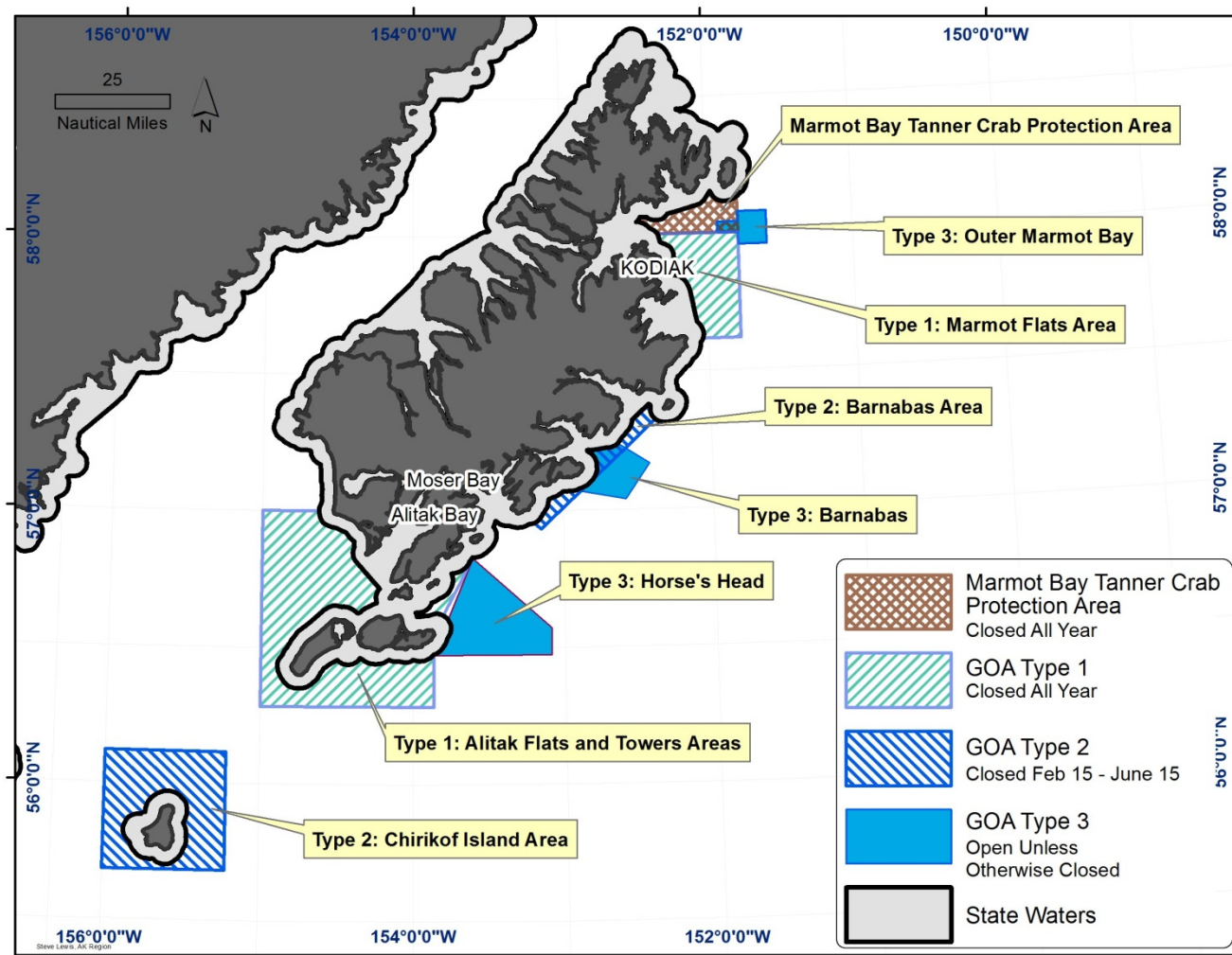


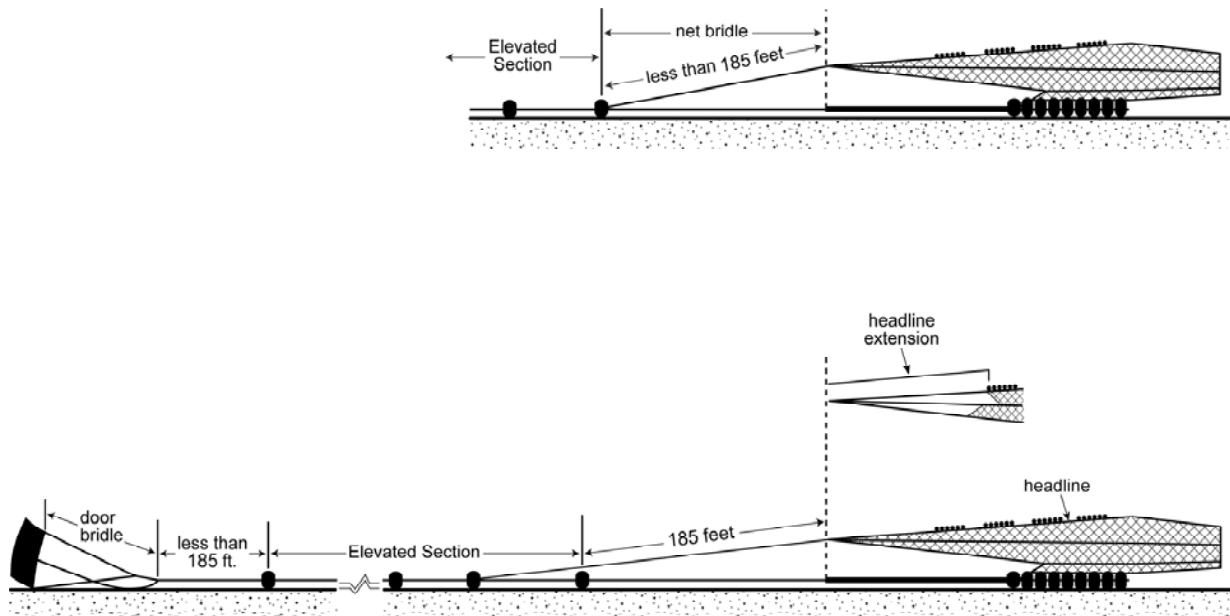
Figure 5 to Part 679. Kodiak Island Areas Closed to Non-pelagic Trawl Gear and Marmot Bay Tanner Crab Protection Area
b. Coordinates

Name and Description of Reference Area	North Latitude / West Longitude	Reference Point
Alitak Flats and Towers Areas	All waters of Alitak Flats and the Towers Areas enclosed by a line connecting the following 7 points in the order listed: 56°59.4'N, 154°31.1'W 57°00.0'N, 155°00.0'W 56°17.0'N, 155°00.0'W 56°17.0'N, 153°52.0'W 56°33.5'N, 153°52.0'W 56°54.5'N, 153°32.5'W 56°56.0'N, 153°35.5'W 56°59.4'N, 154°31.1'W	Low Cape Cape Sitkinak East point of Twoheaded Island Kodiak Island, thence, along the coastline of Kodiak Island until intersection of Low Cape. Low Cape
Marmot Flats Area	All waters enclosed by a line connecting the following five points in the clockwise order listed: 58°00.0'N, 152°30.0'W 58°00.0'N, 151°47.0'W 57°37.0'N, 151°47.0'W 57°37.0'N, 152°10.1'W 57°54.5'N, 152°30.0'W 58°00.0'N, 152°30.0'W	Cape Chiniak, then along the coastline of Kodiak Island to North Cape.
Chirikof Island Area	All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter-clockwise order listed: 56°07.0'N, 155°13.0'W 56°07.0'N, 156°00.0'W 55°41.0'N, 156°00.0'W 55°41.0'N, 155°13.0'W 56°07.0'N, 155°13.0'W	
Barnabas Area	All waters enclosed by a line connecting the following six points in the counter clockwise order listed: 57°00.0'N, 153°18.0'W 56°56.0'N, 153°09.0'W 57°22.0'N, 152°18.5'W 57°23.5'N, 152°17.5'W 57°25.3'N, 152°20.0'W 57°04.2'N, 153°30.0'W 57°00.0'N, 153°18.0'W	Black Point. South Tip of Ugak Island North Tip of Ugak Island Narrow Cape, thence, along the coastline of Kodiak Island Cape Kasick to Black Point, including inshore waters
Marmot Bay Tanner Crab Protection Area	All waters of the EEZ enclosed by straight lines across EEZ waters and following the boundary of the State of Alaska waters connecting the following six points clockwise in the order listed: 58°15.0'N, 152°30.0'W 58°15.0'N, 151°47.0'W 58°00.0'N, 151°47.0'W 58°00.0'N, 152°30.0'W 58°15.0'N, 152°30.0'W	

7. Revise Figure 26 to part 679 to read as follows:

Figure 26 to Part 679 – Modified Nonpelagic Trawl Gear

This figure shows the location of elevating devices in the elevated section of modified nonpelagic trawl gear, as specified under § 679.24(f). The top image shows the location of the end elevating devices in the elevated section for gear with net bridles no greater than 185 feet in length. The bottom image shows the location of the beginning elevating devices near the doors and the end elevating devices near the net for gear with net bridles no greater than 185 feet in length.



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